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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92067794
Party	Plaintiff Joshua S. Schoonover
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Submission	Opposition/Response to Motion
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Date	07/25/2019
Attachments	Ps-Opp-Mot-Strike-Exhibits.pdf(2089144 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Reg. No. 2,207,535 issued on December 1, 1998 and  
Reg. No. 3,598,502 issued on March 31, 1999

Joshua S. Schoonover,	)	
	)	
Petitioner,	)	
	)	Cancellation No.: 92067794 (parent)
vs	)	
	)	Cancellation No. 92069499
The Burton Corporation,	)	
Registrant,	)	

**PETITIONER’S OPPOSITION TO REGISTRANT’S MOTION TO STRIKE**

Petitioner, Joshua S. Schoonover (“Petitioner”), hereby respectfully opposes the REGISTRANT’S MOTION TO STRIKE PETITIONER’S DISCLOSURE OF “UNRETAINED” EXPERT OR, IN THE ALTERNATIVE, TO COMPEL EXPERT REPORT filed by Registrant, The Burton Corporation (“Registrant”), on June 25, 2019 (TTABVUE, Paper #15), and requests that the same be denied.

Background

1. On August 31, 2018, Petitioner served on Registrant discovery labeled as “Petitioners First Request for Admissions”, including Request for Admission No. 28, which reads:

**REQUEST NO. 28.** Admit that, at the time of Registrant’s October 23, 2012 Statement, it was the Registrant’s intent to restructure its company, to stop making and selling goods under the FORUM mark in order to focus resources on its BURTON mark.

In response, **Registrant denied Petitioner's Request for Admission No. 28** (*See Registrant's Response to Petitioners First and Second Requests for Admissions, a true and correct copy of which is enclosed and labeled as "Exhibit-001"*).

2. On April 19, 2019, Petitioner served on Registrant discovery labeled as "Petitioners Third Request for Admissions", including Request for Admission No. 49, which reads:

**REQUEST NO. 49.** Admit that in year 2012 Registrant intended and/or manifested its intent to exit out of the FORUM brand.

In response, **Registrant objected to Petitioner's Request for Admission No. 49 and denied the same** (*See Registrant's Response to Petitioners Third Requests for Admissions, a true and correct copy of which is enclosed and labeled as "Exhibit-002"*).

3. On April 19, 2019, Petitioner served on Registrant discovery labeled as "Petitioners Third Request for Admissions", further including Request for Admission No. 50, which reads:

**REQUEST NO. 50.** Admit that any use by the Registrant in remarks made in 2012 concerning "Exit out of" or "Exiting out of" in connection with the FORUM brand was intended to mean stop selling goods bearing the FORUM mark.

In response, **Registrant objected to Petitioner's Request for Admission No. 50 and denied the same** (*See Exhibit-002*).

4. On April 19, 2019, Petitioner served on Registrant discovery labeled as "Petitioners Third Request for Admissions", further including Request for Admission No. 51, which reads:

**REQUEST NO. 51.** Admit that any use by Registrant in remarks made in 2012 concerning “put them to bed” in connection with the FORUM brand was intended to mean stop selling goods bearing the FORUM mark.

In response, **Registrant objected to Petitioner’s Request for Admission No. 51 and denied the same** (*See Exhibit-002*).

5. On April 19, 2019, Petitioner served on Registrant discovery labeled as “Petitioners Third Request for Admissions”, further including Request for Admission No. 52, which reads:

**REQUEST NO. 52.** Admit that in year 2012 Registrant formed and/or manifested an intent to cease manufacture of goods bearing the FORUM mark.

In response, **Registrant objected to Petitioner’s Request for Admission No. 52 and denied the same** (*See Exhibit-002*).

6. On April 19, 2019, Petitioner served on Registrant discovery labeled as “Petitioners Third Request for Admissions”, further including Request for Admission No. 53, which reads:

**REQUEST NO. 53.** Admit that in year 2012 Registrant formed and/or manifested an intent to stop selling goods bearing the FORUM mark.

In response, **Registrant objected to Petitioner’s Request for Admission No. 53 and denied the same** (*See Exhibit-002*).

7. On April 19, 2019, Petitioner served on Registrant discovery labeled as “Petitioners Third Request for Admissions”, further including Request for Admission No. 54, which reads:

**REQUEST NO. 54.** Admit that on October 23, 2012 Registrant formed and/or manifested an intent to stop selling goods bearing the FORUM mark and merely to maintain the trademarks on the register to preserve rights should anything ever develop in the future.

In response, **Registrant objected to Petitioner's Request for Admission No. 54 and denied the same** (*See Exhibit-002*).

Each of the above Petitioner's Requests for Admissions are directed to a press release published by the Registrant on October 23, 2012, titled "Burton Realigns its Family of Brands for Long-Term Success", a true and correct copy of which is enclosed herewith and labeled as "*Exhibit-003*". Throughout discovery, Registrant refused to provide meaningful answers to Petitioner's Requests for Admissions.

In efforts to build its own business related to the subject FORUM mark, Petitioner obtained meetings with many executives in the action-sports apparel industry to solicit business advice and feedback, and through these meetings Petitioner discovered that Toby F. Bost recalled the events related to the restructuring of The Burton Corporation, particularly the FORUM brand, and the related press release.

Since Petitioner failed to obtain meaningful answers from Registrant in response to discovery requests, and in effort to support the grounds for which cancelation is sought, namely abandonment, Petitioner next sought to obtain Mr. Bost's testimony evidence concerning the meaning of the phrases: "transition out of", "transitioning out of", "exit out of", and "exiting out of", which phrases were used by the Registrant in its published press release, and related published

articles, and interviews in 2012 and thereafter, the aggregate of which are believed by Petitioner to evidence an objective manifestation of Registrant's intent to abandon use of the FORUM mark.

On April 19, 2019, Petitioner served notice of intent to use the Declaration of Toby F. Bost as expert testimony in the instant proceeding.

Now, Registrant brings a motion to strike the evidence obtained from Petitioner's expert, namely, the Declaration of Toby F. Bost. A true and correct copy of the evidence that is subject to this motion, the Declaration of Toby F. Bost, is enclosed herewith and labeled as "***Exhibit-0004***".

Law

1. Fed. R. C. P. Rule 26 (2)(B): Unless otherwise stipulated or ordered by the court, [the] disclosure must be accompanied by a written report—prepared and signed by the witness—if **the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony.**

2. "[T]o give the phrase 'retained or specially employed' any real meaning, a court must acknowledge the difference between **a percipient witness who happens to be an expert and an expert who without prior knowledge of the facts giving rise to litigation is recruited to provide expert opinion testimony.**" Downey v. Bob's Discount Furniture Holdings, Inc., 633 F.3d 1, 6-7 (1st Cir. 2011)

3. Where an expert's opinion testimony arises from his enlistment as an expert **and not from an on-the-scene involvement in any incidents giving rise to the litigation**, that expert is "retained" for purposes of Rule 26(a)(2)(B) and that rule therefore requires a written report. RTX

Scientific, Incorporated v. Nu-Calgon Wholesaler, Inc., 106 USPQ2d 1492 (TTAB 2013) [precedential].

Facts

Petitioner intends to submit the Declaration of Toby F. Bost (*Exhibit-004*) as evidence in support of Petitioner's theory that Registrant, through its press release and other published documents and interviews, manifested an intent to abandon use of the FORUM mark.

Toby F. Bost was discovered by Petitioner to specifically recall certain substance and events at issue in this proceeding, namely the Registrant's publications concerning its "transitioning out of" the FORUM brand (Declaration of Joshua S. Schoonover, a true and correct copy is attached and labeled as "*Exhibit-005*", *item 4 thereof*).

Toby F. Bost was CEO of La Jolla Group, a company that owned the rights to several action-sports clothing brands at the time of the Registrant's press release (circa October 23, 2012); Mr. Bost maintained an office in Irvine, Ca at that time, the same city where Forum was headquartered. (*Exhibit-004, item 6*)

Being located in the same city (Irvine, CA) and engaged in the same business as Registrant (action-sports apparel and hard goods), the Registrant's press release (*Exhibit-003*), and related news, was buzzworthy and notable, to the extent that Mr. Bost recalls receiving the news and what it meant to him at the time (*Exhibit-004, item 6*).

The Declarant, Toby. F. Bost, is a percipient witness who happens to be an expert (*Exhibit-005, item 7*).

In anticipation that the Registrant might later object to the Declaration of Toby F. Bost on the basis that he is an expert whose disclosure should be provided as expert disclosures, and to weigh on the side of early disclosure, the Petitioner decided to give notice of intent to use expert testimony gathered from Mr. Bost as opposed to waiting and producing the evidence as witness or rebuttal testimony.

### Argument

The Declaration of Toby F. Bost is probative to the issue of abandonment, since: (i) it provides clarity to the Board concerning the industry-specific meaning of particular phrases used in the Registrant's press release and related publications; and (ii) it lends opinion of a percipient witness, who happens to be an expert (*Downey v. Bob's Discount Furniture Holdings, Inc.*), for guiding the Board concerning how one in the relevant field had perceived at the time, and continues to perceive, intent as-manifested within the content of Registrant's publications.

Mr. Bost's declaration is not prejudicial since it merely clarifies the meaning of phrases used in the relevant field and lends opinion concerning his impression, developed at the time the press release was disseminated, concerning the contents of documents published by Registrant; i.e. Mr. Bost was an "on the scene" observer of the press release and related media buzz in the industry.

The statute is very clear regarding who must submit a report, that is: an expert witness who is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony (*F.R.C.P. Rule 26(B)(2)*).

Here, Toby F. Bost is not retained, specially employed or an employee of Petitioner (*Exhibit-004, item 13*); therefore, no expert report is required under the Rules. For example, Mr.



Bost's testimony arises out of his receipt and impressions concerning the press release at issue (*Exhibit-003*), which were gathered at or near the time the press release became public, i.e. circa October 23, 2012. Mr. Bost was not sought because he is an expert in the field; rather, he was asked to testify after it had been discovered that he, as an expert with intimate connection to the related field, had personally recalled the events described in the documents at issue, and had formed opinions at the time received, which opinions remain at present time and are relevant to the issues of intent and abandonment in this particular proceeding. Thus, Mr. Bost is a witness, the former CEO of O'Neill, he knows action-sports brands and the apparel business, he recalls the press release and Registrant announcing its "exit" from the program brands, and he offers to lend his opinion to the record concerning what it means (or meant at the time) to those in the industry to "exit out of" or "transition out of" a brand. His opinion arises from his "on-the-scene" involvement as a businessman in the relevant field (action sports apparel), in the same city where Forum was headquartered (Irvine, Ca), who received an impression upon reviewing the Registrant's published press release and related interview, coupled with his familiarity of terms and phrases of art in the relevant field. Mr. Bost's opinions do not arise from being hired, or review of the record (for clarity, Mr. Bost did refresh himself with a review of the press release and other documents as set forth in his Declaration). For at least these reasons, Mr. Bost is not the type of expert which is intended to be obligated to provide an expert report under Rule 26(B)(2).

The circumstances in this case are distinct from those of *RTX Scientific, Incorporated v. Nu-Calgon Wholesaler, Inc.*; and this was discussed with Registrant's counsel previously.

Further, because Mr. Bost was not retained or specially employed to provide his opinion, he was not asked to provide, and did not provide, a report of the kind which satisfies Rule 26(B)(2). He merely provided a declaration. A copy of the declaration has been shared with Registrant's

counsel. No expert report is available, and thus none has been provided. Further, an expert report would not reveal additional information that would be probative to the issue in the case.

The Board has authority to consider the evidence, not consider it, or give it more or less weight, depending on the extent to which clarification concerning the meaning of the particular phrases in the Registrant's publications is needed, or the extent to which a subjective impression (opinion) from an expert in the relevant field, formed based on dissemination of the subject press release, which goes to intent, is needed. In any respect, the evidence is more probative than prejudicial, and should be made available to the Board.

Moreover, it is surprising to see what amounts to admissions in Registrant's Motion to Strike, namely:

"Burton further expressly reserved, and continues to reserve, its right to argue that Bost's purported opinions are inadmissible under Fed. R. Evid. 702. It is nearly inconceivable that Bost can—consistent with Rule 702 and *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993)—opine as to **the meaning of ordinary English words that any lay person is capable of comprehending**, nor especially as to the "intent" Burton allegedly possessed on October 23, 2012." (TTABVUE, Paper #15, page 2, footnote 3)

The Registrant's press release explicitly states: "*Also part of today's restructure, Burton announced it will **transition out of** its Program brands (Foursquare, **Forum** and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support*

*them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in order to better focus on and invest in Burton” (Exhibit-003, page 1, third paragraph); and “[b]ut even under Burton’s wing, after 8 years, the [Forum business has] failed to be viable. Consequently, Burton has realized it’s time to exit out of them, in order to better focus and invest in the Burton brand. Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season (Exhibit-003, page 4, fifth paragraph)”.*

If the above language of the Registrant’s press release amounts to “*ordinary English words that any lay person is capable of comprehending*”, then why did the Registrant repeatedly deny the meaning of the same in Petitioner’s Requests for Admissions, particularly those presented in the Background herein? Why is Registrant even defending this proceeding; are these words not a clear manifestation of intent to abandon use of the Forum mark?

Petitioner only obtained the Declaration of Toby F. Bost because Registrant denied the meaning of the alleged “*ordinary English words that any lay person is capable of comprehending*” during discovery. Petitioner reserves the right to present the declaration of Mr. Bost as rebuttal evidence.

If it is the case that the subject matter of Mr. Bost’s testimony is not “expert testimony” for the reason that a lay person understands the substance therein; then Mr. Bost’s declaration should at least be allowed as witness testimony, or rebuttal testimony should it become necessitated.

For these reasons, Petitioner requests the Board to deny Registrant’s Motion to Strike, and to further deny Registrant’s alternative request to order Petitioner to produce an expert report from Mr. Bost. An order indicating the subject evidence is admissible is respectfully requested.

Respectfully submitted,

Dated: July 25, 2019

By: /Joshua S. Schoonover/  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION TO STRIKE, including copies of all Exhibits referenced therein, has been served on CATHLEEN E STADECKER, counsel for Registrant, by forwarding said copy on July 25, 2019, via email to:

CStadecker@drm.com,  
tmip@drm.com

Signature: /Joshua S. Schoonover/

Date: July 25, 2019

**EXHIBIT-001**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Reg. No. 2,134,652 issued on February 3, 1998  
and Reg. No. 2,207,535 issued on December 1, 1998

-----X	:	
Joshua S. Schoonover,	:	
	:	
Petitioner,	:	Cancellation No. 92067794
	:	
-against-	:	
	:	
The Burton Corporation	:	
	:	
Registrant.	:	
-----X	:	

**REGISTRANT'S RESPONSE TO PETITIONER'S FIRST AND SECOND REQUESTS  
FOR ADMISSIONS**

Registrant, The Burton Corporation, responds to Petitioner's First and Second Requests for Admissions as follows:

**GENERAL OBJECTIONS**

Registrant objects to Petitioner's requests to the extent they call for or encompass information outside the scope of that required under the Federal Rules of Civil Procedure or other applicable law, or to the extent that, as worded, they call for the disclosure or production of information protected by the attorney-client privilege and/or work product doctrine. All responses set forth herein are made without waiver of these General Objections.

**REQUEST NO. 1.**

Admit that Registrant acquired the "Program Brands", namely "FOURSQUARE"; "FORUM"; and "SPECIAL BLEND", on or about July 15, 2004.

**RESPONSE TO REQUEST NO. 1.**

Admitted.

**REQUEST NO. 2.**

Admit that Registrant published a statement on or about October 23, 2012 related to, inter alia, Registrant's intent to "transition out of the Program Brands (FOURSQUARE, FORUM, and SPECIAL BLEND)" (hereinafter, the "October 23, 2012 Statement").

**RESPONSE TO REQUEST NO. 2.**

Admitted that Registrant issued a press release dated October 12, 2012 titled "Burton Realigns its Family of Brands for Long-Term Success," and that Burton also provided a document titled "2012 Burton Restructure: Key Facts by Brand" to help answer follow up questions from the press. Denied except as expressly admitted.

**REQUEST NO. 3.**

Admit, after diligent inquiry, that Transworld Snowboarding published a copy of the Registrant's October 23, 2012 Statement as identified in item 2, above, and that a copy of the Registrant's October 23, 2012 Statement is publicly available at:

<https://snowboarding.transworld.net/news/burton-realigns-its-family-of-brands-for-long-term-success/8/31>.

**RESPONSE TO REQUEST NO. 3.**

Denied.

**REQUEST NO. 4.**

Admit that Petitioner's evidence labeled as SCH-000001-SCH000005 is a true and correct copy of the Registrant's October 23, 2012 Statement available at:



<https://snowboarding.transworld.net/news/burton-realigns-its-family-of-brands-for-long-term-success/8/31>.

**RESPONSE TO REQUEST NO. 4.**

Denied.

**REQUEST NO. 5.**

Admit, after diligent inquiry, that ESPN published an article related to Registrant's October 23, 2012 Statement, and that a copy of ESPN's article is publicly available at:

[http://www.espn.com/action/snowboarding/story/\\_/id/8545120/burton-announces-brand-restructuring-forum-close-analog-surf-skate](http://www.espn.com/action/snowboarding/story/_/id/8545120/burton-announces-brand-restructuring-forum-close-analog-surf-skate).

**RESPONSE TO REQUEST NO. 5.**

Admitted.

**REQUEST NO. 6.**

Admit that Petitioner's evidence labeled as SCH-000006-SCH-000012 is a true and correct copy of ESPN's article available at:

[http://www.espn.com/action/snowboarding/story/\\_/id/8545120/burton-announces-brand-restructuring-forum-close-analog-surf-skate](http://www.espn.com/action/snowboarding/story/_/id/8545120/burton-announces-brand-restructuring-forum-close-analog-surf-skate).

**RESPONSE TO REQUEST NO. 6.**

Admitted.

**REQUEST NO. 7.**

Admit, after diligent inquiry, that on or about October 23, 2012, the Adventure Sports Network interviewed Registrant's CEO, Jake Burton Carpenter, about the facts related to the Registrant's October 23, 2012 Statement, and that the Adventure Sports Network published an article quoting portions of the interview with Mr. Burton, which article is publicly available at:

<https://www.adventuresportsnetwork.com/transworld-business/burton-overhauls-corporate-structure-pulling-out-of-the-program/>.

**RESPONSE TO REQUEST NO. 7.**

Admitted that Adventure Sports Network published an article relating to Burton's October 12, 2012 press release, available at the URL provided. Denied except as expressly admitted.

**REQUEST NO. 8.**

Admit that Petitioner's evidence labeled as SCH-000013-SCH-000038 is a true and correct copy of Adventure Sports Network's article available at:

<https://www.adventuresportsnetwork.com/transworld-business/burton-overhauls-corporate-structure-pulling-out-of-the-program/>.

**RESPONSE TO REQUEST NO. 8.**

Admitted.

**REQUEST NO. 9.**

Admit, after diligent inquiry, that the Adventure Sports Network published an article related to the snowboarding industry's reaction related to the facts within the Registrant's October 23, 2012 Statement, which article is publicly available at:

<https://www.adventuresportsnetwork.com/sport/snowboarding/snow-industry-reacts-to-burton-snowboards-dropping-legendary-brands/>.

**RESPONSE TO REQUEST NO. 9.**

Admitted that Adventure Sports Network published an article relating to Burton's October 12, 2012 press release, available at the URL provided. Denied except as expressly admitted.

**REQUEST NO. 10.**

Admit that Petitioner's evidence labeled as SCH-000039-SCH-000042 is a true and correct copy of Adventure Sports Network's article available at:

<https://www.adventuresportsnetwork.com/transworld-business/burton-overhauls-corporate-structure-pulling-out-of-the-program/>.

**RESPONSE TO REQUEST NO. 10.**

Denied.

**REQUEST NO. 11.**

Admit, after diligent inquiry, that The Angry Snowboarder published an article related to the Registrant's October 23, 2012 Statement, which article is publicly available at:

<http://www.angrysnowboarder.com/forum-four-square-and-special-blend-no-more/>.

**RESPONSE TO REQUEST NO. 11.**

Admitted.

**REQUEST NO. 12.**

Admit that Petitioner's evidence labeled as SCH-000043-SCH-000055 is a true and correct copy of The Angry Snowboarder's article available at:

<http://www.angrysnowboarder.com/forum-four-square-and-special-blend-no-more/>.

**RESPONSE TO REQUEST NO. 12.**

Admitted.

**REQUEST NO. 13.**

Admit that Registrant, or one of its affiliated companies, owns now or owned at any time, an account on FACEBOOK ([www.facebook.com](http://www.facebook.com)) under the handle "@forumsnowboards", and

that the @forumsnowboards FACEBOOK page was used in connection with marketing goods associated with the FORUM mark.

**RESPONSE TO REQUEST NO. 13.**

Admitted.

**REQUEST NO. 14.**

Admit, after diligent inquiry, that the @forumsnowboards FACEBOOK page is inactive and that the most recent post on the @forumsnowboards FACEBOOK page is dated November 16, 2012.

**RESPONSE TO REQUEST NO. 14.**

Admitted.

**REQUEST NO. 15.**

Admit that Petitioner's evidence labeled as SCH-000056-SCH-000058 is a true and correct copy of the @forumsnowboards FACEBOOK page which is publicly available at: <https://www.facebook.com/forumsnowboards/>.

**RESPONSE TO REQUEST NO. 15.**

Admitted.

**REQUEST NO. 16.**

Admit that Registrant, or one of its affiliated companies, owns now or owned at any time, an account on TWITTER ([www.twitter.com](http://www.twitter.com)) under the handle "@forumsnowboards", and that the @forumsnowboards TWITTER page was used in connection with marketing goods associated with the FORUM mark.

**RESPONSE TO REQUEST NO. 16.**

Admitted.

**REQUEST NO. 17.**

Admit, after diligent inquiry, that the @forumsnowboards TWITTER page is inactive and that the most recent post on the @forumsnowboards TWITTER page is dated October 18, 2012.

**RESPONSE TO REQUEST NO. 17.**

Admitted.

**REQUEST NO. 18.**

Admit that Petitioner's evidence labeled as SCH-000059-SCH-000061 is a true and correct copy of the @forumsnowboards TWITTER page which is publicly available at:

<https://twitter.com/forumsnowboards?lang=en>.

**RESPONSE TO REQUEST NO. 18.**

Admitted.

**REQUEST NO. 19.**

Admit that Registrant, or one of its affiliated companies, owns now or owned at any time, an account on INSTAGRAM ([www.instagram.com](http://www.instagram.com)) under the handle "@forumsnowboards", and that the @forumsnowboards INSTAGRAM page was used in connection with marketing goods associated with the FORUM mark.

**RESPONSE TO REQUEST NO. 19.**

Admitted.

**REQUEST NO. 20.**

Admit, after diligent inquiry, that the @forumsnowboards INSTAGRAM page is inactive and that the most recent post on the @forumsnowboards INSTAGRAM page is dated September 27, 2012.

**RESPONSE TO REQUEST NO. 20.**

Admitted.

**REQUEST NO. 21.**

Admit that Petitioner's evidence labeled as SCH-000062-SCH-000064 is a true and correct copy of the @forumsnowboards INSTAGRAM page which is publicly available at: <https://www.instagram.com/forumsnowboards/>.

**RESPONSE TO REQUEST NO. 21.**

Admitted.

**REQUEST NO. 22.**

Admit that Registrant has not marketed any goods connected with the FORUM mark on social media since November 16, 2012.

**RESPONSE TO REQUEST NO. 22.**

Denied.

**REQUEST NO. 23.**

Admit that between January 26, 2014 and January 26, 2017, Registrant has not sold goods bearing the FORUM mark.

**RESPONSE TO REQUEST NO. 23.**

Denied.

**REQUEST NO. 24.**

Admit that at the time of the Registrant's October 23, 2012 Statement, Registrant intended to "put to bed" the Program Brands (FOURSQUARE, FORUM, SPECIAL BLEND) and no longer sell goods under these marks.

**RESPONSE TO REQUEST NO. 24.**

Denied.

**REQUEST NO. 25.**

Admit that Registrant sponsored athletes under the FORUM mark prior to the Registrant's October 23, 2012 Statement.

**RESPONSE TO REQUEST NO. 25.**

Admitted.

**REQUEST NO. 26.**

Admit that Registrant sponsored an athlete by the name of JP Walker under the FORUM mark prior to Registrant's October 23, 2012 Statement.

**RESPONSE TO REQUEST NO. 26.**

Admitted.

**REQUEST NO. 27.**

Admit that Registrant has sponsored no athletes under the FORUM mark since January 26, 2014.

**RESPONSE TO REQUEST NO. 27.**

Admitted.

**REQUEST NO. 28.**

Admit that, at the time of Registrant's October 23, 2012 Statement, it was the Registrant's intent to restructure its company, to stop making and selling goods under the FORUM mark in order to focus resources on its BURTON mark.

**RESPONSE TO REQUEST NO. 28.**

Denied.

**REQUEST NO. 29.**

Admit that, at the time the Petition to Cancel was filed, namely January 26, 2017, Registrant was not selling goods bearing the FORUM mark.

**RESPONSE TO REQUEST NO. 29.**

Denied.

**REQUEST NO. 30.**

Admit that Registrant did not exhibited [sic] goods, related in any way to the FORUM mark, at any trade show in years 2013 thru 2017.

**RESPONSE TO REQUEST NO. 30.**

Admitted.

**REQUEST NO. 31.**

Admit that Registrant benefitted from one or more business or tax write-offs related to the goodwill associated to the FORUM mark.

**RESPONSE TO REQUEST NO. 31.**

Admitted.

**REQUEST NO. 32.**

Admit that Registrant did not market, or offer for sale, any goods that in any way relate to the FORUM mark, on any websites owned or managed by Registrant in the years 2013 thru 2017.

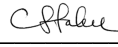
**RESPONSE TO REQUEST NO. 32.**

Denied.



Date: September 27, 2018

DOWNS RACHLIN MARTIN PLLC

By:   
Cathleen E. Stadecker  
Attorney for Registrant  
The Burton Corporation  
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Burlington, VT 05402-0190  
Phone: (802) 863-2375  
Fax: (802) 862-7512

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document entitled **REGISTRANT'S RESPONSE TO PETITIONER'S FIRST AND SECOND REQUESTS FOR ADMISSIONS**, was served on Petitioner at the following email address on September 27, 2018: [LawGroup@CoastalPatent.com](mailto:LawGroup@CoastalPatent.com)



Jennifer Parent

# EXHIBIT-002

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Reg. No. 2,207,535 issued on December 1, 1998  
and Reg. No. 3,598,502 issued on March 31, 1999

-----X

Joshua S. Schoonover,	:	
	:	
Petitioner,	:	Cancellation No. 92067794 (parent)
	:	Cancellation No. 92069499
-against-	:	
	:	
The Burton Corporation	:	
	:	
Registrant.	:	

-----X

**REGISTRANT'S RESPONSE TO PETITIONER'S THIRD REQUESTS FOR**  
**ADMISSIONS**

Registrant, The Burton Corporation, responds to Petitioner's Third Requests for  
Admissions as follows:

**GENERAL OBJECTIONS**

Registrant objects to Petitioner's requests to the extent they call for or encompass  
information outside the scope of that required under the Federal Rules of Civil Procedure or other  
applicable law, or to the extent that, as worded, they call for the disclosure or production of  
information protected by the attorney-client privilege and/or work product doctrine. All responses  
set forth herein are made without waiver of these General Objections.

**REQUEST NO. 33.** Admit that Registrant did not manufacture shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark in year 2013.

**RESPONSE TO REQUEST NO. 33.** Denied as to sweatshirts, but admitted to shirts, hats, beanies, caps, socks, gloves and belts.

**REQUEST NO. 34.** Admit that Registrant did not manufacture shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark in year 2014.

**RESPONSE TO REQUEST NO. 34.** Admitted.

**REQUEST NO. 35.** Admit that Registrant did not manufacture shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark in year 2015.

**RESPONSE TO REQUEST NO. 35.** Admitted.

**REQUEST NO. 36.** Admit that Registrant did not manufacture shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark in year 2016.

**RESPONSE TO REQUEST NO. 36.** Admitted.

**REQUEST NO. 37.** Admit that Registrant did not manufacture shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark in year 2017.

**RESPONSE TO REQUEST NO. 37.** Admitted.

**REQUEST NO. 38.** Admit that Registrant did not manufacture shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark in year 2018.

**RESPONSE TO REQUEST NO. 38.** Admitted.

**REQUEST NO. 39.** Admit that Registrant has not sold any shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark and which were manufactured after year 2013 and prior to year 2018 (i.e. 2014, 2015, 2016, and 2017).

**RESPONSE TO REQUEST NO. 39.** Admitted.

**REQUEST NO. 40.** Admit that Registrant's sales, if any, of shirts, sweatshirts, hats, beanies, caps, socks, gloves, and belts bearing the FORUM mark after year 2013 and prior to year 2018 (i.e. 2014, 2015, 2016, and 2017) were directed to liquidation of existing inventory and/or winding down of the FORUM brand.

**RESPONSE TO REQUEST NO. 40.** Registrant objects to this request to the extent the phrase "directed to liquidation of existing inventory and/or winding down of the FORUM brand" is vague and ambiguous, and to the extent the phrase "FORUM brand" is not defined. Notwithstanding the foregoing objections and without waiver thereof, denied.

**REQUEST NO. 41.** Admit that Registrant did not manufacture snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark in year 2013.

**RESPONSE TO REQUEST NO. 41.** Denied as to snowboards, but admitted as to snowboard bindings, and snowboard leashes and accessories.

**REQUEST NO. 42.** Admit that Registrant did not manufacture snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark in year 2014.

**RESPONSE TO REQUEST NO. 42.** Admitted.

**REQUEST NO. 43.** Admit that Registrant did not manufacture snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark in year 2015.

**RESPONSE TO REQUEST NO. 43.** Admitted.

**REQUEST NO. 44.** Admit that Registrant did not manufacture snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark in year 2016.

**RESPONSE TO REQUEST NO. 44.** Admitted.

**REQUEST NO. 45.** Admit that Registrant did not manufacture snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark in year 2017.

**RESPONSE TO REQUEST NO. 45.** Admitted.

**REQUEST NO. 46.** Admit that Registrant did not manufacture snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark in year 2018.

**RESPONSE TO REQUEST NO. 46.** Admitted as to snowboard bindings, snowboard leashes and accessories. Denied except as expressly admitted.

**REQUEST NO. 47.** Admit that Registrant has not sold any snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark and which were manufactured after year 2013 and prior to year 2018 (i.e. 2014, 2015, 2016, and 2017).

**RESPONSE TO REQUEST NO. 47.** Admitted.

**REQUEST NO. 48.** Admit that Registrant's sales, if any, of snowboards, snowboard bindings, and snowboard leashes and accessories therefor bearing the FORUM mark after year 2013 and prior to year 2018 (i.e. 2014, 2015, 2016, and 2017) were directed to liquidation of existing inventory and/or winding down of the FORUM brand.

**RESPONSE TO REQUEST NO. 48.** Registrant objects to this request to the extent the phrase "directed to liquidation of existing inventory and/or winding down of the FORUM brand" is vague and ambiguous, and to the extent the phrase "FORUM brand" is not defined. Notwithstanding the foregoing objections and without waiver thereof, denied.

**REQUEST NO. 49.** Admit that in year 2012 Registrant intended and/or manifested its intent to exit out of the FORUM brand.

**RESPONSE TO REQUEST NO. 49.** Registrant objects to this request to the extent it calls for a legal conclusion, for which no response is required. Notwithstanding the foregoing objections and without waiver thereof, and to the extent a response may be required, denied.

**REQUEST NO. 50.** Admit that any use by the Registrant in remarks made in 2012 concerning “Exit out of” or “Exiting out of” in connection with the FORUM brand was intended to mean stop selling goods bearing the FORUM mark.

**RESPONSE TO REQUEST NO. 50.** Registrant objects to this request to the extent it calls for a legal conclusion, for which no response is required. Notwithstanding the foregoing objections and without waiver thereof, and to the extent a response may be required, denied.

**REQUEST NO. 51.** Admit that any use by the Registrant in remarks made in 2012 concerning “put them to bed” in connection with the FORUM brand was intended to mean stop selling goods bearing the FORUM mark.

**RESPONSE TO REQUEST NO. 51.** Registrant objects to this request to the extent it calls for a legal conclusion, for which no response is required. Notwithstanding the foregoing objections and without waiver thereof, and to the extent a response may be required, denied.

**REQUEST NO. 52.** Admit that in year 2012 Registrant formed and/or manifested an intent to cease manufacture of goods bearing the FORUM mark.

**RESPONSE TO REQUEST NO. 52.** Registrant objects to this request to the extent it calls for a legal conclusion, for which no response is required. Notwithstanding the foregoing objections and without waiver thereof, and to the extent a response may be required, denied.

**REQUEST NO. 53.** Admit that in year 2012 Registrant formed and/or manifested an intent to stop selling goods bearing the FORUM mark.

**RESPONSE TO REQUEST NO. 53.** Registrant objects to this request to the extent it calls for a legal conclusion, for which no response is required. Notwithstanding the foregoing objections and without waiver thereof, and to the extent a response may be required, denied.

**REQUEST NO. 54.** Admit that on October 23, 2012 Registrant formed and/or manifested an intent to stop selling goods bearing the FORUM mark and merely to maintain the trademarks on the register to preserve rights should anything ever develop in the future.

**RESPONSE TO REQUEST NO. 54.** Registrant objects to this request to the extent it calls for a legal conclusion, for which no response is required. Further objecting, the phrase “should anything ever develop in the future” is vague and ambiguous. Notwithstanding the foregoing objections and without waiver thereof, and to the extent a response may be required, denied.


**REQUEST NO. 55.** Admit that prior to, or in response to, the Petitioner’s Third Discovery Requests (Interrogatories, Req. for Admissions, Req. for Production of Documents), Registrant has disclosed, or will timely disclose, to Petitioner, all documents concerning manufacture and sale of goods bearing the FORUM mark that are in Registrant’s possession and no documents have been, or will be, knowingly withheld.

**RESPONSE TO REQUEST NO. 55.** Registrant objects to this request insofar as it is not an appropriate Request for Admission. Registrant has heretofore complied with its discovery obligations and will continue to do so, as required by law.



Date: May 17, 2019.

DOWNS RACHLIN MARTIN PLLC

By:   
Cathleen E. Stadecker  
Attorney for Registrant  
The Burton Corporation  
199 Main Street, P.O. Box 190  
Burlington, VT 05402-0190  
Phone: (802) 863-2375  
Fax: (802) 862-7512

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document entitled **REGISTRANT'S RESPONSE TO PETITIONER'S THIRD REQUESTS FOR ADMISSIONS**, was served on Petitioner at the following email address on May 17, 2019: LawGroup@CoastalPatent.com



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Jennifer W. Parent

# EXHIBIT-003

## **Burton Realigns its Family of Brands for Long-Term Success**

BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.

Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.

Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in order to better focus on and invest in Burton.

Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.

In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here – snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time – driven by the Burton, Analog and anon brands."

Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.

Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.

In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."

#### **About Burton**

In 1977, Jake Burton Carpenter founded Burton Snowboards out of his Vermont barn and has dedicated his life to snowboarding ever since. Burton has played a pivotal role in growing snowboarding from a backyard hobby to a world-class sport by creating groundbreaking products, supporting a team of top snowboarders and pushing resorts to allow snowboarding. Today, Burton designs and manufactures industry-leading products for snowboarding and the snowboard lifestyle, including snowboards, boots, bindings, outerwear and layering as well as year-round apparel, packs/bags and accessories. Privately held and owned by Jake and his wife, Burton President Donna Carpenter, Burton's headquarters are in Burlington, Vermont with offices in Austria, Japan, Australia and California. For more information, visit [www.burton.com](http://www.burton.com).

Follow our line at [facebook.com/burtonsnowboards](https://facebook.com/burtonsnowboards) and [twitter.com/burtonsnowboard](https://twitter.com/burtonsnowboard)

#### **Media Contact:**

Anne-Marie Dacyshyn  
[amd@burton.com](mailto:amd@burton.com)  
Burton Snowboards  
(802) 652-3720

## 2012 Burton Restructure: Key Facts by Brand

### **ANALOG**

#### Heritage

Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.

#### Key Facts

- Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.
- Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.
- After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.
- The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.

#### Team Update

The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.

### **GRAVIS**

#### Heritage

Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.

#### Key Facts

- Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.
- With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.
- Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.

#### Team Update

With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.

## **RED & ANON**

### Heritage

RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.

### Key Facts

- Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.
- RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.

### Team Update

We will be working with each RED and anon team rider on an individual basis regarding this announcement.

## **THE PROGRAM (Foursquare, Forum, Special Blend)**

### Heritage

Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.

### Key Facts

- The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.
- But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.
- Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.
- Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.

### Team Update

We will be working with each team rider on an individual exit plan to transition them out of these brands.

## **CHANNEL ISLANDS**

### Heritage

Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.

### Key Facts

- Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.
- Burton is very happy with and committed to our relationship with Channel Islands.

### Team Update

There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.

**BURTON SNOWBOARDS**

Burton will continue to do what it does best: make and support products that set the bar for snowboarding development. The most graphic change will be increased resources and investments made available to Burton to further progress our sport and lifestyle. Outside of our renewed focus, it will be business as usual.

###



# EXHIBIT-004

Cancellation No 92067794 (Parent)

Cancellation No. 92069499

*Joshua S. Schoonover*

v.

*The Burton Corporation*

**DECLARATION OF TOBY F. BOST**

I, Toby F. Bost, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I have served a career as an executive in the action sports apparel and hardgoods business, including executive roles at La Jolla Group, O'Neill, Rip Curl, and No Fear. A true and correct copy of my resume is attached herewith as "Exhibit A".
2. I founded the La Jolla Group's multi branded portfolio as CEO/Chairman (brands included: O'Neill, Lost, Rusty, Metal Mulisha, FMF, Alien Workshop, Habitat, Reflex, Berrics, Target Swim, LJC Retail, LJC Ecommerce).
3. For purposes herein, the term "action sports" is synonymous with "extreme sports", and means a sport that is physically hazardous, such as: surfing, skateboarding, snowboarding, and motocross.
4. I have appeared on the television series: Undercover Boss, CBS Feb 2013; and participated in multiple features in the Wall Street Journal, LA Times, and other national media platforms.
5. I am an expert in the action sports apparel and hard goods business.
6. During the years 1999-2013, my office was physically located in Irvine, CA, the same city where Forum Snowboards was headquartered prior to the "Burton Restructuring" as described in the Burton Press Release titled "Burton Realigns its Family of Brands for Long-Term Success" (a

true and correct copy is attached as “Exhibit B”). Being in the same city, and in the same business (action sports apparel), the Burton Press Release was a significant and meaningful event in the action sports industry that I recall well.

7. I have refreshed my recollection with a review of the Burton Press Release (Exhibit B).

8. I have further refreshed my recollection with a review of the Transworld Business interview with Jake Burton, published by the action sports network with the title: “Jake Burton On Overhauling Corporate Structure, Closing The Program Brands”, a copy of the interview is publicly available at: <https://www.adventuresportsnetwork.com/transworld-business/burton-overhauls-corporate-structure-pulling-out-of-the-program/> (a true and correct copy attached as “Exhibit C”).

9. I have been asked by Petitioner, Joshua S. Schoonover, to clarify the meaning of the phrase “transition out of”, “transitioning out of”, “exit out of” or “exiting out of” as it is used in the action sports apparel and hard goods business. I have also been asked to lend my opinion as to the intent of The Burton Corporation related to the act of exiting out of the Program Brands, namely the Forum brand.

10. First, the phases “transition out of”, “transitioning out of”, “exit out of” or “exiting out of”, with respect to a brand, is a phrase that is often used in the action sports apparel and hardgoods business, and to “transition out” or “exit out” means, with respect to the brand, to stop making, selling and/or offering for sale, goods which bear the mark associated with the respective brand. With respect to a business, it would mean to cease activities of a business as a whole. In the instant matter, the phrase “transition out of” or “exit out of” is used in connection with The Program Brands, including Forum.

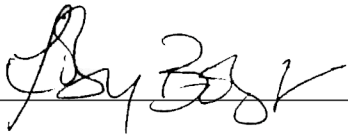
11. Therefore, it is my opinion that when The Burton Corporation made a public statement

(Exhibits B&C, respectively) manifesting intent to “exit out of the Program Brands”, namely Forum, it was received by myself, and likely most or all in the field, that Burton was going to stop manufacturing and selling goods bearing these marks, specifically the Forum mark.

12. Jake Burton expressly confirmed the intent to “put [Forum] to bed” in the Transworld Business interview (Exhibit C) but suggested The Burton Corporation would seek to maintain the trademarks. It appears from the documentary evidence, and is certainly my opinion, that The Burton Corporation’s intent was to stop making and selling goods bearing the Forum mark, among other marks identified, but to preserve the trademark registrations in absence of actual commercial use.

13. I have not been retained, paid or compensated in exchange for providing this declaration and opinion testimony. I am volunteering these statements and opinions in an effort to assist the Trademark Trial and Appeal Board (TTAB) with clarification of the meaning of a term of art in a specific field, which I understand to be disputed by the parties, and to lend my opinion concerning intent of The Burton Corporation as it relates to subject matter manifested in published releases and interviews, which intent is speculated but may be best appreciated under the circumstances by those with relevant experience in the particular field, and therefore my opinion may be helpful to the TTAB to redress a disputed issue, namely, intent which goes to the issue of abandonment. I have no interest in the outcome of this matter.

Dated: 7/24/2019

Signed:   
Toby F. Bost

# EXHIBIT A

## Contact

[www.linkedin.com/in/tobybost](http://www.linkedin.com/in/tobybost)  
(LinkedIn)

## Top Skills

Making a career out of BRAND  
BUILDING

Apparel

Brand Development

# Toby Bost

President and CEO//Senior Executive//Board Member  
Greater San Diego Area

## Summary

- + Appeared on Undercover Boss, CBS Feb2013. Multiple features in Wall-street Journal, LA Times, and other national media platforms
- + 25yr seasoned veteran in Consumer Products including Apparel, Footwear, Accessories, Class I&II Medical Devices
- + E2E understanding of business operations, creative, and marketing
- + Experienced Consumer Products Exec & CMO for Global Medical Device leader with P&L responsibilities
- + Seasoned veteran in the boardroom and in interacting with directors
- + Results-driven professional with 20 years of experience in brand building, interactive marketing, product franchising, running operations, manufacturing and delivering on revenue generation
- + Founded the La Jolla Group's multi branded portfolio as CEO/Chairman (O'Neill, Lost, Rusty, Metal Mulisha, FMF, Alien Workshop, Habitat, Reflex, Berrics, Target Swim, LJG Retail, LJG Ecommerce)
- + Excellent long term relationships with retailers globally
- + Passion for creative processes & product innovation. Visioned consistent top selling product franchises for all consumer segments across the DJO & LJG portfolios. Directly managed creative teams from design inception to completion. Developed the industry leading and award winning Superfreak™ board short line for O'Neill
- + Skill set includes ability to identify opportunity, define the marketplace, build brands, drive customer transactions,

## Exhibit-004

management of creative design, 21st century marketing, recruiting, ability to lead direct to consumer (ecommerce & brick and mortar) sales, and manufacturing of market leading products

+ Responsibilities: day to day management, identify opportunity, lead acquisition transactions, conduct license negotiations, partner relationships, product creation, press, product feedback, operations, hiring and follow-on investments

+ Deep and broad relationships to attract investors and brands

+ Successful track record working with complex organizational layers of executives and direct reports.

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## Experience

### DJO Global

President Consumer Business/Chief Marketing Officer

November 2013 - Present

Greater San Diego Area

A Blackstone Portfolio Company

### La Jolla Group LLC

CEO

May 2006 - November 2013 (7 years 7 months)

Irvine, CA

### O'Neill

CEO, COO, EVP

May 1999 - November 2013 (14 years 7 months)

Irvine, CA

### Rip Curl

VP Manufacturing

May 1998 - May 1999 (1 year 1 month)

### No Fear

VP Manufacturing

January 1996 - May 1998 (2 years 5 months)

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## Education

University of San Diego

Bachelor of Business Administration - BBA · (1989 - 1993)



# EXHIBIT B

**Burton Realigns its Family of Brands for Long-Term Success**

BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.

Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.

Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in order to better focus on and invest in Burton.

Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.

In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here – snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time – driven by the Burton, Analog and anon brands."

Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.

Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.

In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."

### **About Burton**

In 1977, Jake Burton Carpenter founded Burton Snowboards out of his Vermont barn and has dedicated his life to snowboarding ever since. Burton has played a pivotal role in growing snowboarding from a backyard hobby to a world-class sport by creating groundbreaking products, supporting a team of top snowboarders and pushing resorts to allow snowboarding. Today, Burton designs and manufactures industry-leading products for snowboarding and the snowboard lifestyle, including snowboards, boots, bindings, outerwear and layering as well as year-round apparel, packs/bags and accessories. Privately held and owned by Jake and his wife, Burton President Donna Carpenter, Burton's headquarters are in Burlington, Vermont with offices in Austria, Japan, Australia and California. For more information, visit [www.burton.com](http://www.burton.com).

Follow our line at [facebook.com/burtonsnowboards](https://facebook.com/burtonsnowboards) and [twitter.com/burtonsnowboard](https://twitter.com/burtonsnowboard)

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## 2012 Burton Restructure: Key Facts by Brand

### **ANALOG**

#### Heritage

Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.

#### Key Facts

- Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.
- Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.
- After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.
- The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.

#### Team Update

The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.

### **GRAVIS**

#### Heritage

Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.

#### Key Facts

- Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.
- With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.
- Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.

#### Team Update

With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.

**RED & ANON**Heritage

RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.

Key Facts

- Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.
- RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.

Team Update

We will be working with each RED and anon team rider on an individual basis regarding this announcement.

**THE PROGRAM (Foursquare, Forum, Special Blend)**Heritage

Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.

Key Facts

- The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.
- But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.
- Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.
- Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.

Team Update

We will be working with each team rider on an individual exit plan to transition them out of these brands.

**CHANNEL ISLANDS**Heritage

Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.

Key Facts

- Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.
- Burton is very happy with and committed to our relationship with Channel Islands.

Team Update

There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.

**BURTON SNOWBOARDS**

Burton will continue to do what it does best: make and support products that set the bar for snowboarding development. The most graphic change will be increased resources and investments made available to Burton to further progress our sport and lifestyle. Outside of our renewed focus, it will be business as usual.

###

# EXHIBIT C

# Jake Burton On Overhauling Corporate Structure, Closing The Program Brands

*lewism*



Burton Founder and CEO Jake Burton. Photo: Curtes

In a company-wide meeting this morning, [Jake Burton](#) announced a sweeping realignment of the company's brands and corporate structure including transitioning out of The Program brands, Foursquare; Forum; and Special Blend after this winter, moving Gravis to Tokyo and distributing it solely in Asia, transitioning Analog out of skate and surf, launching anon helmets, and scaling back RED to limited availability.

We caught up with [Burton](#) after the meeting to learn more about the impacts and goals of this difficult decision:

**Sounds like it was a difficult morning out in Burlington today?**

Yeah, it was a little while coming--pretty tough. Especially for the people involved, but something we had to go through.



## Exhibit-004

**What's the mood over there today following this morning's meeting?**

The affects here in Burlington were negligible in the context of people or non-existent really.

**The impacts were more in the California offices?**

Yeah, it's obviously more of a blow to our California crew. It's the hardest part of the whole thing obviously. We all feel that we've sort of let each other down, but everybody gave 100 percent in investment and commitment and passion towards those brands, but in the long run the writing was on the wall. I think everybody pretty much accepts that and has come to grips with it.

**Will you guys be closing the Costa Mesa offices?**

There's quite a period of time of transition so that won't be happening immediately, but over time, probably. We have two buildings in Costa Mesa, Burton is out of a building as well. So we'll probably, over a period of six months or so, squeeze everything into there.

We're still shipping Analog spring/summer and we want to support it in the context of marketing and inventory and everything else that goes along with having a brand in the marketplace?

**Can you share how many people were affected or a percentage?**

We are privately held so it's not like we have to file specific information, but I think it's a bit vague in the context. We could have put on sort of an act and pretended like the brands were still in business and had trade show booths.

**Smoke and mirrors.**

Exactly. We didn't go that route so consequently we wanted to be honest and forth coming and not bullshit people. Our decision was to announce it pretty quickly and consequently a lot of people are sticking around to facilitate the transition. They're not sticking around forever. Some people are pretty much done, but that's a minority.

As you know, this is the beginning of a long-term transition strategy. As such, specifics on HR data will not be disclosed. What I can share is that where appropriate and where opportunities exist, we will be absorbing staff into the Burton infrastructure full-time, and/or keeping them on for transitional roles and support.

**There's been a lot of talk and speculation around the industry about how you guys were impacted by last winter and the economy in general.**

That definitely precipitated it in some form, but **financially we've had a couple good years**. This year's looking fine, so this was more of a function of, and I say this in all honestly, looking forward at the long-term viability of those brands. Maybe a killer winter last year would have made us less focused on looking at our longer term deal, but I don't think it was something that was made in the context of just a tough winter.

## Exhibit-004

**You think that would have just prolonged the decision?**

Yeah, it would have probably just made us a little bit less inclined to look at the long-term viability of everything we're involved in.

**In saying this has been a long time coming, give me a background of the discussions around these changes and where you're looking at taking things for Burton?**

It's a combination of the success that we've had with the Burton brand and also in new categories on a year-round basis. The apparel thing is going very well and our bag and pack business continues to surprise us with how real it is. We came to the realization that those are the areas where we should be investing and it's where the brightest future is for us and our retailers.

**With focusing more of your efforts on the Burton brand, where do you see reinvesting on that side?**

We can focus more money on the marketing side of our year-round business--the apparel, bags, and pack stuff. We can invest in product development and R&D facilities much like we built Craig's for the board thing--we want to add in to [Craig's](#) the capability to make prototype bags--same day like we do with boards, and take things in that direction. Having those other brands that were not making money--it wasn't like I was all stressed solely about having to make money--but in the longer term it was money that could have been spent in other areas.

**The philosophy of focusing on what you do well and pouring your energy into that is a serious reality in today's economy.**

Yeah, exactly. We have a board of directors--they're pretty financially oriented and capable people. They're more advisors because we're privately held and can do what we want, but the message from them was that this economy is very much rewarding those who focus on their core business. To hear that repeatedly, I guess it finally sunk in.

**Take a look back at the Burton timeline:****As far as The Program brands, the release says your transitioning out of them. What does that mean? Are you planning on selling them or are you putting those to bed?**

We'll probably, to use your words, put them to bed. I don't see us selling them. I think we will retain the trademarks should anything ever develop in the future, but it's part and parcel of the philosophy of looking at what we do best. We have looked at opportunities to target those brands towards specific opportunities that might exist in the marketplace at different levels of distribution or price points and it seems like the message we get from people is "we want Burton." So we've got to be responsive to that.

**Do you see launching a different line under Burton to better target The Program customer?**

## Exhibit-004

For sure. I think that the Burton brand is pretty encompassing, but this is an opportunity for us to expand our core business as we know it and seize on opportunities that exist.

**On to the Gravis front, how much of the market share of Gravis has been in the Asian market? I'm guessing that's why you're shifting it there.**

I don't have those numbers, but it's probably been close to, or more than, half. Even in the early years when Gravis was wildly successful, so much of the business done in North America and Europe was being diverted to Japan. Japan has always had this very genuine affinity towards the brand and I think our people over there were very anxious to give it a shot and felt they could succeed. I think in many ways it will be cool to have the brand rooted where it is virtually adored.

**So it will be headquartered out of the Burton Japan office?**

Yes, for sure.

**With funneling more resources into the Burton brand, do you foresee launching Burton footwear with that product knowledge from Gravis?**

It's not on the table. We really want to focus on our snowboard boots and products.

**On the anon side, it definitely makes sense to roll helmets up with that and move away from RED.**

That's something we've been talking about and it had been in process. It almost felt a little bit awkward lumping it in with this other news about other decisions that were made more recently, but we felt it was logical since this was going to be happening to announce them all together at the same time.

The anon thing is interesting. It's different logic that pushed that decision, but when you look at it in and of itself it's sort of the same philosophy.

**Will the design direction be similar to RED or will it be a big departure?**

I think it's an opportunity for different identity on the helmets in the context of logo-ing, and we're putting more resources into it. There were also a lot of efficiencies right there just with the expenses of running two brands. The efficiencies of making it one brand gives us more money to invest in R&D, design, marketing, team, and so forth.

**What does that mean as far as RED having limited availability going forward?**

We want to support the riders--there are some team riders on RED...

**So they'll stay on?**

Yeah.

**Will product still be available at retail?**

## Exhibit-004

I don't know if we've decided the exact scope, but for sure in our retail. Beyond that, I'm not sure. It probably depends a lot on what the demand is.

**With focusing most of your efforts back on snowboarding, why did you guys decide to leave Channel Islands unaffected?**

Channel Islands is very independent. It's not any kind of a distraction for us and it's something we're very proud of and it's viable in the long term.

**And performing well financially?**

It's not the size of Burton and I wouldn't say it's making money hand over fist, but to a certain extent it's a labor of love. It's such a good thing and I feel a commitment to AI [Merrick] and a commitment to the people there to perpetuate it. It's very independent and doesn't have the end result of taking our eye off the ball in any way.

**What would be the take away message for your retailers? What does this mean for the relationship and for your brand?**

Just like it's tough for myself, I think it will be tough to a lot of retailers who have shown commitments to these brands. I don't want to minimize that. I get it and I understand it and I feel the same way, but I am confident that this is the right move in the long term for us and our retailers. I don't think that there is any conflict of interest there. I think we are very aligned and I think they will see that and see our increased commitment to our core business and I think we will all benefit in the long run. Hopefully they have confidence in our ability to make the right decisions and I think by and large we've done that in the long term. We've been in this business for over 35 years and a lot of our retailers have been in it damn near that long themselves. It's a tough period of time and I don't want to minimize the severity of what's going on, but I think that it is a decision that has been agonized over and debated and very thought out and I think that they need to trust us on that and those that do I think will be rewarded in the long run.

**Anything else you'd like to add?**

I just wish the best for the people affected.

**Follow the jump for this morning's press release and a run down of the affects on Analog, Gravis, anon, RED, Channel Islands, The Program, and Burton...**

Exhibit-004



Here's the release:

*BURLINGTON, VT (October 23, 2012) Burton Snowboards today announced that its senior management team has elected to alter the structure of Burton owned brands to better position the company, its retail partners and stakeholders for the future. The current family of brands includes Analog, Gravis, RED, anon, Foursquare, Forum, Special Blend and Channel Islands. During a company-wide meeting today at its headquarters in Vermont, Burton Founder and CEO Jake Burton explained the new structure and how it will allow Burton to focus on what it does best: make and support products that set the bar for snowboarding development and further progress the sport and lifestyle.*

*Specifically, Burton announced the following changes to its structure and subsidiaries. Over the next year, Analog will return to its roots of being a pure snowboarding brand based at its original home in Burlington, Vermont. Analog has a deep heritage in snowboarding from the day when Greg Dacyshyn (Burton Chief Creative Officer) and the late Jeffy Anderson (Team Rider) gave birth to the brand in Burlington, and as such, will revert back to being a winter-only brand. Burton's Gravis brand will ultimately move its headquarters to Tokyo, Japan and moving forward will be solely distributed in Asian markets selling lifestyle shoes and bags. Gravis was established in 1998 as the company's first independent lifestyle brand, and since then, Asia has been by far its most successful region. As a result, Gravis will now focus purely on this market and opportunity. Further, in a move that Burton has been planning for several years, the company will also start developing protective headwear under the anon brand name. Burton will continue to offer its RED helmets on a limited basis, but the bulk of helmet and optics product lines will be combined under the anon brand, which has become synonymous with quality riding accessories.*

*Also part of today's restructure, Burton announced it will transition out of its Program brands (Foursquare, Forum and Special Blend), which were purchased in 2004 with the intent to keep snowboard companies in the hands of snowboarders. Burton has supported these brands for eight years and will continue to support them over the next year through warranty service, dealer support, marketing and inventory. The company will exit out of The Program brands in winter 2014, in*

## Exhibit-004

*order to better focus on and invest in Burton.*

*Finally, Channel Islands, which was acquired by Burton in 2006, will be unaffected by this brand realignment and will continue to design, develop and manufacture best-in-class surf hardgoods products in Carpinteria, California.*

*In addressing all of these changes, Jake Burton had this to say: "Burton has experienced several years of income growth since the recession and paid out bonuses to employees over the last two years," said Jake. "That said, the economy has a voice of its own that we all have to listen to, and the message is clear: do what you do best and focus purely on it. In our case, that means to narrow our focus to the sport and lifestyle that got us here - snowboarding. We will continue to support Channel Islands in its endeavor to make the best surfboards in the world and Gravis in its new home in Japan, but when you walk through the front door here in Burlington, Vermont, it will be all snowboarding and snowboarding lifestyle all the time - driven by the Burton, Analog and anon brands.*

*Jake went on to share that one of the key factors that led senior management to these decisions includes the success of Burton's entry into the apparel and bag/pack business on a year-round basis, which has grown significantly in all seasons. The message Burton has taken from the marketplace is that for long-term success, this is the direction that the company should be pursuing, along with its core hardgoods and outerwear business.*

*Increasing the company's focus on Burton has also been demonstrated by recent significant investments in Burton's headquarters and infrastructure. These include the acquisition of the building next door to its Burlington, Vermont headquarters where the company not only built Craig's, a new 10,000-square-foot R&D and prototype facility, but also Area 13, a 6,000-square-foot Burton/anon/Analog wholesale showroom. Craig's (named after the late Craig Kelly) is known as the most advanced and sophisticated snowboard prototype facility in the world where ideas are conceived, built and on-snow in less than 24 hours. Area 13 is Burton's marquee showroom where retailers from all over the world can come to Vermont to see future product lines. Like today's announcement, both of these examples demonstrate the company's commitment to the long-term growth, progression and success of the Burton snowboard brands.*

*In closing, Jake went on to state the following: "I take full responsibility for the decisions that led to the creation (or acquisitions) of these ancillary brands, and I similarly am the individual ultimately responsible for the decision to realign and focus more purely on what made this company from the start. Clearly, the most difficult aspect of this decision and transition is the people affected. The employees and team riders associated with these brands have poured their guts into making it happen. Their level of commitment has been extraordinary, and we will do everything we can to help support them through this transition. There is never a good time for moves like this, and we could have delayed the announcement, but it isn't our style to perpetuate a myth. Clearly this transition will pose challenges along the way, but in the long run, everyone will see the results of our commitment to our core business."*

## Exhibit-004

**2012 Burton Restructure: Key Facts by Brand****ANALOG***Heritage*

*Following Burton's outerwear legacy, Analog was created in 1999 as a more progressive, style-conscious outerwear collection led by a handful of top pros at the time, including Trevor Andrew, Jeffy Anderson and Gigi Ruf. Since then, Analog has continued to drive many of snowboarding's outerwear style trends, and in 2003 Analog added a streetwear component to its line, followed by surf apparel, a surf team and an Analog skate platform.*

*Key Facts*

- *Burton has made the decision to ultimately transition out of Analog surf and skate apparel by next fall.*
- *Analog surf and skate apparel will be shipped through Spring/Summer '13, and will be marketed and supported.*
- *After the spring season, Burton will continue to design, develop and distribute Analog as a winter-only brand, operating out of Burton's headquarters in Burlington, Vermont, with points of distribution around the world.*
- *The new Analog will only design and distribute Analog outerwear and tech apparel, called "ATF", along with basics.*

*Team Update*

*The Analog snow team, made up of Danny Davis, Mikkel Bang and Zak Hale will continue on as Analog riders. Regarding the Analog surf and skate teams, we will be working with each team rider individually on an exit plan to transition them out of the brand.*

**GRAVIS***Heritage*

*Gravis was started by Burton in 1998, as the company's first independent lifestyle brand. From the start, Gravis was focused on creating casual footwear, bags and softgoods built on an action sports lifestyle platform. Today the brand is still rooted in footwear, with the addition of a skate shoe collection and team, launched in August, 2008.*

*Key Facts*

- *Gravis will ultimately become an Asian-only brand, which will result in the wind down of the brand in North America, Southern Hemisphere and Europe.*
- *With this decision, Gravis' headquarters will be re-located to Tokyo and run out of Japan, in order to best serve the Asian market where Gravis is the most established and where it has its most viable business.*
- *Gravis product will be shipped through Spring/Summer '13 in all regions. Gravis will become an Asian-only brand in the fall of 2013.*

## Exhibit-004

*Team Update*

*With this move to be a primarily lifestyle brand, the Gravis team will be restructured to accommodate the lifestyle market in Asia.*

**RED & ANON***Heritage*

*RED was started by Burton in 1996 as its first protection brand. Since then, RED has designed, developed and manufactured helmets and protective wear for pros and consumers alike. Anon was established as Burton's eyewear brand in 2001 and focuses on goggles.*

*Key Facts*

- *Burton will be developing and manufacturing protective headwear (helmets) under the anon name. Anon has become synonymous with quality riding accessories, and it is a natural extension to add helmets to its mix.*
- *RED helmets will continue to be sold on a limited basis. Anon helmets will be launched for Winter 2014 for all channels.*

*Team Update*

*We will be working with each RED and anon team rider on an individual basis regarding this announcement.*

**THE PROGRAM (Foursquare, Forum, Special Blend)***Heritage*

*Burton purchased The Program brands in 2004 from Four Star Distribution. At that time, Burton felt an obligation (and an opportunity) to slow the trend of ski companies buying up snowboard brands. Consequently, when these companies went up for sale, Burton purchased them and they became 'The Program' brands for Burton.*

*Key Facts*

- *The intent from the beginning was to keep snowboard companies in the hands of snowboarders and keep these brands thriving. As the world's leading snowboard company, Burton felt there would never be a better home for these three brands.*
- *But even under Burton's wing, after 8 years, the businesses have failed to be viable. Consequently, Burton has realized it's time to exit out of them, in order to better focus and invest in the Burton brand.*
- *Therefore, Burton will be transitioning out of Foursquare, Forum and Special Blend globally after this season.*
- *Current winter 2013 product will be supported over the next year, via warranty, dealer, marketing and inventory support.*

*Team Update*



## Exhibit-004

*We will be working with each team rider on an individual exit plan to transition them out of these brands.*

**CHANNEL ISLANDS***Heritage*

*Burton acquired Channel Islands Surfboards in June, 2006 after the founders of each company, Al Merrick and Jake Burton, forged an agreement over the fact they shared a similar mindset and passion for their respective sports. With their shared vision for putting the sports in the hands of the team athletes and shared philosophies on hardgoods product development, it was a very natural partnership.*

*Key Facts*

- *Channel Islands is not affected by the announcements today. Burton will continue to support the CI operation in Carpinteria, California, as usual.*
- *Burton is very happy with and committed to our relationship with Channel Islands.*

*Team Update*

*There will be no team riders affected, as there are no changes to the Channel Islands operating or marketing structure.*

**EXHIBIT-005**

Cancellation No 92067794 (Parent)

Cancellation No. 92069499

*Joshua S. Schoonover*

v.

*The Burton Corporation*

**DECLARATION OF JOSHUA S. SCHOONOVER**

I, Joshua S. Schoonover, hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Petitioner in the above-identified Cancellation Proceeding.
2. Throughout discovery, Registrant has failed to provide meaningful answers to my discovery requests, in particular, certain Requests for Admissions (RFAs No. 28, and 49-54).
3. In an effort to build my business, which intends to sell apparel and snowboard-related hard goods under the FORUM mark, I have taken meetings with many business experts, particularly experts with experience in the action sports (extreme sports) apparel and hard goods business.
4. Through diligent efforts, I was able to discuss the action sports apparel business with the former CEO of O'Neill, Toby F. Bost; an expert who has many years of experience with the action sports apparel business. In our discussions, it was discovered that Mr. Bost had an office in Irvine, Ca, the same city where Forum was headquartered, and Mr. Bost specifically recalled events and substance related to the Burton Press Release published Oct. 23, 2012, which is a subject of contention in this proceeding.
5. Because I was unable to obtain clear and affirmative answers from the Registrant concerning the meaning of the phrases "exit out of" and "transition out of" the FORUM mark as used in the Oct. 23, 2012 press release, and a subsequent interview with Jake Burton, President of

The Burton Corporation (“Registrant”), I decided to ask Mr. Bost to testify as to his recollection of the press release, the meaning of phrases used therein, and his opinion about what the press release means (or meant at the time).

6. Prior to serving expert disclosures, I believed that had I not disclosed Mr. Bost as an expert and later attempted to submit Mr. Bost’s testimony, the Registrant would likely object to the testimony as being expert testimony but not timely disclosed; therefore, I opted to disclose the potential expert, Mr. Bost, and the subject matter of his anticipated testimony to opposing counsel.

7. Mr. Bost was not retained or specially employed to give testimony. Instead, it was discovered that Mr. Bost had specific knowledge, as an “on the scene” type witness who experienced the news of the Burton Press Release as it came out, being located in the same city and in the same business where Forum was headquartered. His testimony is probative to the issue of intent and abandonment of the Forum mark and fills a void where Registrant has been evasive and unwilling to provide clear and meaningful answers. For these reasons, Mr. Bost was asked to provide his declaration testimony in an effort to aid the Board, should it be necessary, to understand the subject matter of the press release. For these reasons, Mr. Bost is a percipient witness who happens to be an expert.

8. But for the Registrant being evasive and refusing to provide meaningful answers to my Requests for Admissions, the testimony from Mr. Bost would not have been necessitated.

Dated: July 25, 2019

Signed: /JSS/

Joshua S. Schoonover

Petitioner